

# How Defenders Can Secure Racial Justice Policy Reform: Working through the Community Oriented Defender Movement

By Melanca D. Clark

**T**he election of Barack Obama, the first African American president in the nation's history, is a stunning testament to the progress of race relations in this country. Nevertheless, on any given day in local public defender offices, the persistence of racial inequity is made plain by the steady stream of black and brown faces coming through the door.

The causes are myriad, but the fact that racial and ethnic disparities persist at all stages of involvement with the criminal justice system is a phenomenon that many observers attribute to trends that include racial profiling, selective enforcement of criminal statutes and discriminatory sentencing schemes. As veteran public defender Leonard Noisette has observed, "so enormous is the problem in some places - for example, where virtually everyone in the system is of color, - that it becomes invisible, making it difficult to motivate people to fight racism."

While overwhelming caseloads can make the idea of addressing systemic inequities daunting, public defenders increasingly have begun to think about ways in which to pursue public policy reform that can break the cycle of mass imprisonment of African Americans and Latinos. These defenders are recognizing that the clients and the communities they represent are best served by combating the structural injustice that has turned courthouse entrances into revolving doors.

For more than five years, the Brennan Center for Justice at the New York University School of Law has had the privilege of working with several of these defenders through the Community Oriented Defender Network. The Brennan Center created the Community Oriented Defender Network as a way to honor Gideon's 40th anniversary in 2003. Since its inception, the Network has grown from eight to more than 40 agencies. These "community defenders" share a common view that the representation of individuals charged with crimes can be made more effective by a deep engagement of defenders with the communities in which their clients live.

Community defenders seek out collaboration with neighboring community members, community groups, local social service providers and a broad range of other institutional players, understanding that relationships with these players can produce life-changing opportunities for clients — opportunities far less likely to become available when representation is provided exclusively on the traditional model.

Community defenders view their clients' problems through a broad lens. Moving from the individual circumstances affecting each client to the institutional

forces acting on whole groups of defendants, community defenders advocate on behalf of their clients as a community or collective constituency, rather than as a mere collection of "cases."

How these committed public defenders can best engage in advocacy and policy reform around the issue of racial inequity in the criminal justice system was the subject of a jointly convened conference held this past summer (August 2008) at New York University School of Law by the Community Oriented Defender Network in partnership with the American Council of Chief Defenders. Titled "Public Defense: Leading the Way to Racial Justice," the conference was the foundation for a follow up panel session, *Securing Racial Justice Policy Reforms, Ideas from the COD Network*, conducted at the National Legal Aid & Defender Association ("NLADA") annual conference this past fall (November 2008) in Washington D.C.

In both settings, panelists and conferees came together to discuss the ways in which racial and ethnic bias pervade the criminal justice system — and what defenders can do to effect change.

**Out of the dialogue, the following principles emerged:**

## Collect data

An obvious yet often overlooked role for public defenders in the battle against racial injustice is to collect data that illuminates the disparities that exist in the criminal justice system and, by doing so, to hold law enforcement and prosecutorial authorities accountable for their actions.

Given their position on the front line, public defenders have unparalleled opportunity to gather statistics on patterns surrounding pre-trial detention, arrest, prosecution and sentencing of defendants. Defenders often have access to judicial, prison and other databases that track such information.

As an initial measure, defenders should ensure these data systems track the race and ethnicity of defendants at every stage at which contact with the criminal justice system is recorded. But, once confident that these metrics are being accurately tracked, public defenders can then determine whether there are patterns of disparate treatment based on race.

For example, the Neighborhood Defenders Northwest of Baltimore is currently examining enforcement and prosecutorial practices in Baltimore's Early Resolution Court. Specifically, the defenders, with the assistance of the Brennan Center, are analyzing whether racial dispari-

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ties exist with respect to the issuance of citations and arrests, types of pleas offered, and sentences imposed on individuals arrested for minor nuisance crimes and referred to the court. Data that demonstrates that similarly situated individuals receive different criminal justice outcomes based on race can effectively highlight injustices endemic to the justice system, and galvanize stakeholders in the pursuit of reform.

### Leverage Partnerships

To be sure, crushing case loads and the resource constraints of most public defender offices, particularly in the current economic climate, make the notion of challenging racial disparities a daunting task. Leveraging partnerships with other organizations can help increase a defender's capacity to address racial inequity, and tackle systemic problems affecting their client communities, despite limited resources. Non-profit advocacy organizations and universities are possible candidates to assist public defenders in analyzing the problem(s) they have identified. For example, the Legal Aid Society is currently partnering with the NAACP Legal Defense Fund (LDF), a civil rights advocacy organization, in examining so-called "vertical sweeps" in public housing developments in New York City, in which officers proceed from floor to floor detaining individuals in order to identify and arrest those who do not reside in the building. The Legal Aid Society is relying on LDF's expertise in analyzing the trespass arrest data to determine whether racial disparities exist in arrest rates. When the project is complete, LDF will be well positioned to educate the media and the public about the results, and ultimately, to help the defenders create a strategy for, and to achieve, any warranted changes in police practices.

### Get a Seat at The Table

Too often, public defenders are excluded from the various state and local level commissions and task forces created to address racial disparities in law enforcement, prosecution and sentencing practices. Public defenders need to make the case that their presence is not only valuable, but vital, given their unique vantage point as witness to the impact of policy choices on clients and the communities in which clients reside.

One defender agency that has managed to secure a key position on a state level commission is Connecticut's Division of Public Defender Services. The public defender's office has a permanent seat on the state's Commission on Racial and Ethnic Disparity, a commission created by the legislature to address and eliminate racial and ethnic disparity in Connecticut's criminal justice system. The commission includes representatives from the courts; criminal justice agencies; the legislature; minority, children and families; and victim advocacy agencies and organizations. As the chief public defender's designee on the commission, Preston Tisdale has observed, "many components of the criminal justice system perform their

prescribed duties without ever conducting any critical analyses of the roles that those duties play in the perpetuation of racial disparity."

The commission, with the critical participation of the public defender's office, provides a forum and mandate for stakeholders to examine and acknowledge the problem of policies, traditions and cultures which promote racial and ethnic disparity, and address their harmful effects. The commission's recent accomplishments include providing instrumental support for the enactment of a bill raising the age for the court's juvenile jurisdiction to 18, as well as a bill requiring the legislature to consider the potential impact on racial and ethnic minorities of proposed criminal justice legislation before it is enacted, and this past fall organizing the first conference on ethnic disparities in the criminal justice system, which was attended by more than 700 criminal justice professionals, public policy makers, educators, and advocates.

### Be Proactive

There are a number of proactive measures public defenders can take to tackle racial bias in the criminal justice system. As one example, the Minnesota Public Defender was able to increase its capacity to identify certain police practices that could have been motivated by racial bias by creating a searchable database, accessible to all attorneys, of all police reports filed with the office. The new database enables defenders to pull up all prior police reports for any officer involved in a case, making it possible to see patterns of officer misconduct.

The Minnesota Public Defender has also encouraged defenders to litigate issues of race arising in their cases by issuing monthly "motion of the month" emails which highlight successful motions filed by other defenders. In addition to raising race based claims in litigation, defenders can also testify as experts in state and local legislatures on the nature of racial disparities in their jurisdictions, assist communities in calling for improved policing practices, and work with elected officials to craft legislation that will lead to racial justice reform.

In another example, the Committee for Public Counsel Services, the statewide public defender in Massachusetts, working in partnership with the Brennan Center, is developing legislation to improve the collection, review and monitoring of data on race as a factor in law enforcement traffic stops. The goal is to eliminate racial profiling.

Finally, defenders can also perform an essential function by educating the media and the public about what the government's role should be with respect to reform of the criminal justice system.

### Become a Community Asset

Most people do not think about public defenders until they are arrested. As NYU law professor Kim Taylor-Thompson has said, "[c]ommunities themselves may not welcome defenders as partners in any effort to address

broad political issues. Only in rare instances will a community even consider its local public defender as a resource when tackling problems of community justice."

But, by engaging in community outreach, such as offering "know your rights" trainings, participating in community resource fairs, or creating a forum for the airing of community concerns, defenders can become more visible and more valued. For example, the Youth Advocacy Project, a juvenile defender unit of the statewide defender program in Massachusetts, has been particularly successful in raising its profile by forming alliances with youth worker networks, teen councils, neighborhood initiatives and state agencies. The Youth Advocacy Project has created four editions of "community notebooks," which compile lists of organizations and resources available to at risk and court-involved youth.

Through activities such as these, defenders can develop

relationships of trust in the communities they serve, and in turn can rely on these relationships to identify issues that are most pressing, and to build support for reform.

For more information on how your office can pursue racial justice policy reform initiatives, and to learn more about the Community Oriented Defender Network, visit: [http://www.brennancenter.org/content/section/category/community\\_oriented\\_defender\\_network](http://www.brennancenter.org/content/section/category/community_oriented_defender_network). ☆

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